

**R E M A R K S**

Reconsideration of this application, as amended, is respectfully requested.

**RE: THE CLAIMS**

Claims 39-52 have been canceled, without prejudice.

New independent claim 53 has been added to recite the subject matter of claims 39-41 and to clarify the feature of the present invention whereby  $z1=z2$ , based on the subject matter of claim 40 and as supported by the disclosure in the specification at page 68, line 27 to page 69, line 4.

No new matter has been added, and no new issues with respect to patentability have been raised. In this connection, it is noted that new claim 53 recites subject matter which has already been considered by the Examiner.

Accordingly, it is respectfully requested that new claim 53 be approved and entered under 37 CFR 1.116.

**RE: THE OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION**

Submitted herewith is a Terminal Disclaimer with respect to commonly owned USP 6,631,005 to obviate the obviousness-type double patenting rejection. Accordingly, it is respectfully requested that this rejection be withdrawn.

RE: THE PRIOR ART REJECTION

Claims 39-52 were rejected under 35 USC 103 as being obvious in view of the combination of USP 6,201,239 ("Yamamoto et al"), the admitted prior art, and USP 5,214,280 ("Rieder et al"). This rejection, however, is respectfully traversed with respect to new claim 53.

According to the present invention as recited in new claim 53, the optical distance (z1) along the principal axis of the light beam from the beam emitting surface of the surface emitting laser light source to the scale surface where the diffraction grating is formed is equal to the optical distance (z2) along the principal axis of the light beam from the scale surface to the photosensor (z1=z2). In addition, according to the present invention as recited in new claim 53, the surface emitting laser light source and the photosensor are arranged on the same side of the scale, and the scale surface where the diffraction grating is formed is parallel to the light receiving surface of the photosensor.

By contrast, it is respectfully submitted that Yamamoto et al does not disclose, teach or suggest that "z1=z2". In addition, it is respectfully pointed out that Fig. 4 of Yamamoto et al (which the Examiner refers to as disclosing the features of the present invention formerly recited in claims 40 and 41) does not at all disclose that the scale surface where the diffraction

grating is formed is parallel to the light receiving surface of the photosensor (See Fig. 5 of Yamamoto et al, which is a cross-sectional view of the optical encoder shown in Fig. 4).

Accordingly, it is respectfully submitted that new independent claim 53 patentably distinguishes over Yamamoto et al, taken singly or in combination with the admitted prior art or Rieder et al, under 35 USC 103.

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In view of the foregoing, entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

  
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